effect of the payments depends entirely upon the intention of the parties. If authority is needed see *Davies* v. *Briston*[1], *Clarke* v. *Grant*[2], *Marcroft Wagons Ltd.* v. *Smith*[3]. There must be clear evidence on both sides of an intention to create a new contractual tenancy and there is no such clear evidence of such intention here. The plaintiff bank always wanted possession. There is no evidence of any intention whatever of creating a new contractual tenancy with K. Shaik Abdul Kadir or anyone else. The mere acceptance of rent is, to use a not inapt phrase of Mr. Godwin, perfectly neutral. The purported subletting to the first defendant as a result has no effect in law whatsoever. For these reasons, therefore, in my judgment, the plaintiff is entitled to the relief which it seeks.

There will be an order that the defendants deliver up possession of the premises to the plaintiff on or before the 31st July 1963. The defendants must pay the plaintiff damages for trespass at the rate of $93.75 per month to date of giving up possession. There will be an injunction restraining the defendants, their servants and agents from trespassing on the premises. There will also be a declaration that the right, title and interest, if any, of K. Shaik Abdul Kadir in the premises terminated on his death. The defendants must pay the plaintiff's costs of action on the higher scale.

Claims allowed.

Solicitors:—*Donaldson & Burkinshaw; Muthu & Co.*

THE CHARTERED BANK v. PACKIRI MAIDEEN & ANOR.

[O.C.J. (Gill J.) June 10, 1963]

[K.L. — Originating Summons No. 230 of 1962]

Land Code (Cap. 138), ss.149 to 154—Sale of land by public auction—Order by Court to that effect—Whether order can be set aside—Whether publicity and disgrace to family, ground for setting aside order.

Practice and Procedure—R.S.C. 1957, O.54 r.28.

Sections 149 to 154 of the Land Code contemplate the sale of land by public auction. Although it is open to the parties to sell the lands by private treaty before any proceedings are commenced in Court, once such proceedings are commenced the lands have to be sold by public auction. An order for sale by public auction should not be set aside merely because one of the parties wishes to sell it by private treaty in order to avoid publicity and consequent disgrace to his family.

APPLICATION by way of Originating Summons.

Morris Edgar for the applicant.

Second respondent in person.

Gill J.: This was an application by way of Originating Summons under section 149 of the Land Code (F.M.S. Cap. 138) requiring the respondents to show cause why certain lands, the subject matter of charges executed by the respondents in favour of the applicant, should not be sold by public auction under the direction of this Court. The application was supported by the affidavit of an attorney of the applicant stating that notices had been served upon the respondents in accordance with the provisions of sections 138 and 139 of the Land Code and that the respondents had failed to comply with the said notices, thereby making a default in the payment of the principal sum and interest due on the said charges, which default had continued for the space of more than one month.

The Originating Summons was taken out on 21st November, 1962. The first respondent did not enter an appearance to these proceedings. The second respondent entered an appearance on 15th March, 1963. A notice of appointment to hear the Originating Summons was taken out on 20th March, 1963, and the Originating Summons first came up for hearing on 1st April, 1963 when it was adjourned to 22nd April, 1963. On 22nd April, 1963 the second respondent filed an affidavit to say that he objected to the sale of the lands by public auction because he had a purchaser, one Dr. G. D. Smith, who was willing to purchase the lands for a sum of $75,000. The amount due on the charges then was $68,905.91. The hearing of the summons was then adjourned by consent to 6th May, 1963 and later adjourned to 13th May, 1963.

On 13th May, 1963 the only question was whether the property should be sold by public auction or by private treaty. The second respondent at no stage of the proceedings had stated that he had any cause to show why the lands should not be sold. A number of letters had been written to this Court by various people to say that they were prepared to purchase the lands for various amounts, the highest of which was $100,000. As the amount realised at the sale in excess of the amount due under the charges would become payable to the respondents, I felt that in the interests of justice to both respondents the lands should be sold for the highest amount they could fetch. There were indications that if the lands were sold by public auction they would fetch a sum considerably in excess of the amount due on the charges to the applicant. I therefore made an order accordingly.

It is to be observed that Sections 149 to 154 of the Land Code contemplate the sale of land by public auction. It is of course open to the parties to sell the lands by private treaty before any proceedings are commenced in Court, but

once such proceedings are commenced the lands have to be sold by public auction. As far as I can remember, although I made no note of it at the time, the only reason why the second respondent wished to have the lands sold by private treaty was that he wished to avoid publicity and consequent disgrace to his family in the event of the lands being sold by public auction. That, to my mind, was no valid reason for acceding to his request.

On the application of the second respondent under Order 54 Rule 28 the matter was adjourned into Court for further argument on 10th June, 1963. On hearing the second respondent's arguments, I was satisfied that there was no ground upon which I could set aside the order made on 13th May, 1963.

Order accordingly.

Solicitors:—*Morris Edgar & Co.*

RE SEAH TIN TOON

[A.Cr.J. (Wee Chong Jin C.J.) June 12, 1963]

[Singapore — Magistrate's Appeal No. 265 of 1962]

Industrial dispute—Strike—Setting up posters, banners, tables, chairs, etc. on five-foot-way—Whether there was unlawful obstruction or nuisance within the meaning of s. 96, Criminal Procedure Code (Cap. 132).

Criminal Procedure Code (Cap. 132, Chapters XXVIII and IX), ss. 96, 98, 99, 290—Unlawful obstruction or nuisance—Information laid by petitioner—Whether petitioner a party to proceedings—Whether there can be appeal from decision of District Court under s. 290—Whether Court should interfere with discretion of District Judge in such cases.

On November 3, 1962, fifteen of the 32 employees of the Rendezvous Bar and Restaurant went on strike. The strikers put up posters, placards, flags, banners, tables, chairs, benches and stools on the five-foot-way of this restaurant. The majority of the strikers ate their meals on that portion of the five-foot-way and slept there at night. Besides the strikers a few members of the union of whom the strikers were members also slept on the five-foot-way to keep company with the strikers. The articles placed by the strikers on the five-foot-way in front of the restaurant were still there when the report and information was made on December 1, 1962 by the petitioner. The petitioner alleged that there was in existence such an unlawful obstruction or nuisance within the meaning of section 96 of the Criminal Procedure Code as to require the District Court to make a conditional order under that section. The learned District Judge found that the articles placed by the strikers on the five-foot-way did not completely obstruct it and that there was a clean passage for members of the public to pass and re-pass along it so that nothing more than a slight inconvenience of a temporary nature as far as the public was concerned was caused, there being no evidence at all of any serious injury or imminent danger to the general public.

The learned District Judge thus held that the petitioner had failed to show that the obstruction was an unlawful obstruction or nuisance within the meaning of section 96. On appeal by the petitioner,

Held: (1) the petitioner who lay the report or other information under section 96 of the Criminal Procedure Code could not be properly described as a party to the proceedings. He therefore had no right of appeal under section 290 of the Criminal Procedure Code because that section give a right of appeal only to a person who is a party to the proceedings;

(2) on the facts as found by the District Judge the Court ought not to interfere with the discretion exercised by the District Judge under section 96 of the Code.

MAGISTRATE'S APPEAL.

A. P. Rajah for the petitioner.

T. S. Sinnathuray (Crown Counsel) for the Crown.

David Marshall (*amicus curiae*).

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal under the provisions of Chapter XXVIII of the Criminal Procedure Code against the refusal by the learned District Judge to make an order under section 96 on a Report and Information laid before him on the 1st December 1962 by the petitioner Seah Tin Toon.

The material provisions of the Criminal Procedure Code which relate to the subject matter of this appeal are contained in Chapter IX under the heading "Public Nuisances". Section 96 provides *inter alia* that "Whenever a District Court considers on receiving a report or other information and on taking such evidence, if any, as it thinks fit, that—

(a) any unlawful obstruction or nuisance should be removed from any way,.....which is or may be lawfully used by the public.....such Court may make a conditional order requiring the person or corporation causing such obstruction or nuisance.....within a time to be fixed in the order to—

(viii) appear before such Court at a time and place to be fixed by the order and move to have the order set aside or modified in manner hereinafter provided."

Section 98 provides that

"The person or corporation against whom such order is made shall—

(a) perform within the time specified in the order the act directed thereby; or

(b) appear in accordance with such order and show cause against the same."

Section 99 provides that

"If such person does not perform such act or appear and show cause as required by section 98 he shall be liable to the penalty prescribed in that behalf in section 188 of the Penal Code and the order shall be made absolute."

The material facts are as follows:—

On the morning of the 3rd November 1962 fifteen of thirty-two employees of the Rendezvous Bar and Restaurant of Nos. 4 and 5 Bras Basah